

Serving Our Clients and Community
For Over 100 Years

JAMES A. KASSIS
Certified by the Supreme Court
of New Jersey as a Civil Trial Attorney
Admitted in NJ and NY
Direct Line: (973) 540-7339
Email: jak@spsk.com

220 Park Avenue
PO Box 991
Florham Park, NJ 07932-0991
Telephone: 973-539-1000
Fax: 973-540-7300

www.spsk.com

November 12, 2014

Via Facsimile ECF

Honorable James B. Clark, III, U.S.M.J.
U.S. District Court for the District of NJ
Martin Luther King, Jr. Federal Building
& US Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al.
Case No. 2:14-cv-02912-CCC-JBC

Dear Magistrate Clark:

Our office represents Plaintiffs, Morristown Transmissions, LLC, PLJ, LLC, Philip Mathews, Chacko Mathews and Leela Mathews with regard to the above-referenced action.

I am writing to request a telephonic conference to addresses the defendants' grossly overdue discovery responses. The undersigned has been attempting to obtain certain discovery from the defendants since April 4, 2014 and May 21, 2014, respectively. Attached hereto are true and correct copies of the demands and requests that are overdue from the Franchise Defendants and Non-Franchise Defendants as **Exhibits A and B**, respectively. The undersigned has made repeated follow-up requests for this discovery, and even filed a motion to compel in the state court, which became moot when the matter was removed, but the defendants have yet to respond. The most recent follow request was made more than a month ago. True and correct copies of the emails are attached hereto as **Exhibit C**.

The undersigned respectfully request Your Honor's assistance on obtaining this discovery in light of the upcoming discovery end date.

Respectfully,
SCHENCK, PRICE, SMITH & KING, LLP

/s/ James A. Kassis

James A. Kassis

JAK:jak

cc: Peter Boyer, Esq. (via ECF)
Barry Frost, Esq. (via e-ECF)

{01451206.DOC;1 }

EXHIBIT A

JAMES A. KASSIS
Certified by the Supreme Court
of New Jersey as a Civil Trial Attorney
Admitted in NJ and NY
Direct Line: (973) 540-7339
Email: jak@spsk.com

220 Park Avenue
PO Box 991
Florham Park, NJ 07932-0991
Telephone: 973-539-1000
Fax: 973-540-7300

www.spsk.com

April 4, 2014

Via Email and Regular Mail

Peter Boyer, Esq.
Hyland Levin, LLP
6000 Sagemore Drive, Suite 6301
Marlton, New Jersey 08053-3900

Re: Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al.
Docket No. MRS-L-2079-12

Dear Mr. Boyer:

As a follow up to Warren Berest's deposition, please provide the following information and documentation:

1. Copies of all applications submitted by prospective franchisees for AAMCO Franchises that were denied by Warren Berest at any time he was employed with AAMCO Transmission, its affiliates, predecessors and successors in interest.
2. Provide the wholesale price (i.e., price paid by AAMCO) and marked-up price (i.e., price paid by Vincent Caranante) for each of the items listed on Schedule 1.1(a) attached to the Bill of Sale (bates stamped AAM00335).
3. Copy of the credit report run on Philip Mathews in connection with his application for an AAMCO franchise.
4. A copy of the testing score for Philip Mathews showing that he successfully completed the training course.
5. A copy of the entire Philip Mathews file maintained by Warren Berest.
6. Copies of the 2008 through 2013 franchise turnover statistics, including resale, new and/or termination of franchises.

Peter Boyer, Esq.
November 4, 2013
Page 2

7. All documents that show the number of national fleet account repairs performed at the AAMCO store located at 59 Sussex Avenue from 2007 through 2013.
8. All documents showing AAMCO's accounting for the security deposit paid by Philip Mathews, including how the deposit was applied. (AAM00166; Berest 14)
9. All documents accounting for and/or documenting the amounts due and owing for advertising fees as alleged in AAMCO's Counterclaim against Plaintiffs.
10. All documents accounting for and/or documenting for the amounts due and owing for franchise fees as alleged in AAMCO's Counterclaim against Plaintiffs.
11. Copies of weekly gross sales reports submitted to AAMCO from 2008 through 2011 by the then franchisee.
12. Documents identifying the sales person(s) at AAMCO who was/were involved in the sale of the Franchise located at 59 Sussex Avenue, Morristown, New Jersey to Vincent Caranante, the commission earned, the person who earned the commission, and the amount of the sales commission earned.
13. Provide the last known contact information (home address, home phone, cell phone, current employer) for James Guniea and Diana Dieciedu.
14. All documents showing how AAMCO booked, applied, allocated and/or accounted for the \$235,000 purchase price paid by Vincent Caranante, including but not limited to the identity of seller, the amount of the sale price attributed to goodwill, and the amount of the sale price attributed to inventory, supplies, equipment, etc.
15. Identify the name and address of AAMCO's outside accountants in 2011 and 2012.
16. Identify any documents that show whether any of the proceeds of the \$235,000 purchase price was allocated to GNYADA to satisfy outstanding balances and/or to satisfy judgments as indicated in the \$45,000 warrant to satisfy judgment, docket No. MRS-L-3842-10 (attached).
17. Copies of letters sent by AAMCO to Philip Mathews advising him of the sale of the franchise located at 59 Sussex Avenue, Morristown, NJ to Vincent Caranante. If no such letters or communications exist please indicate so.
18. Copies of letters sent by AAMCO to Philip Mathews advising him to remove physical assets located within the building located at 59 Sussex Avenue, Morristown, NJ. If no such letters or communications exist please indicate so.

Peter Boyer, Esq.
November 4, 2013
Page 3

19. All documents, including but not limited to training manuals, booklets, brochures, describing the GOOD training program.

Thank you for your attention to this matter.

Very truly yours,

James A. Kassis

cc: Barry W. Frost, Esq. w/encl. (via regular mail)

EXHIBIT B

SCHENCK
PRICE
SMITH &
KING, LLP
ATTORNEYS AT LAW
~ Founded 1912 ~

Celebrating 100 Years
1912-2012

JAMES A. KASSIS
Certified by the Supreme Court
of New Jersey as a Civil Trial Attorney
Admitted in NJ and NY
Direct Line: (973) 540-7339
Email: jak@spsk.com

220 Park Avenue
PO Box 991
Florham Park, NJ 07932-0991
Telephone: 973-539-1000
Fax: 973-540-7300

www.spsk.com

May 21, 2014

VIA REGULAR MAIL

Barry W. Frost, Esq.
Teich Groh
691 State Highway 33
Mercerville
Trenton, NJ 08619-4407

Re: Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al.
Docket No. MRS-L-2079-12; (Our File No. 25676-0001)

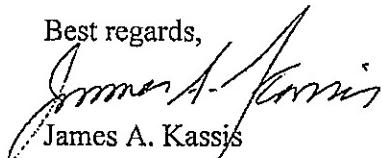
Dear Mr. Frost:

Enclosed please find a Consent to Disclosure or Use of Information relative to the above-referenced matter. The forms are intended to obtain the tax records of Nicholas Caiella, Peter Fiorentino, NCPF, LLP and 2 JOS, LLC. As you know, we attempted to subpoena the tax records for these individuals and/or entities from accountant, Carl A. Marczak, CPA. Mr. Marczak advised that he was unable to release the tax records for his clients without a written consent. I am enclosing the correspondence dated May 8, 2014 from Mr. Marczak setting forth the reasons and the need for a signed consent by your clients to release their tax information.

I would appreciate your cooperation in having your clients execute each of the consent forms enclosed with this correspondence so that we may obtain their tax records. There was no objection nor was there any motion to quash my subpoena seeking to obtain these records from Mr. Marczak, so there should be no objection to your clients signing these consent forms.

Thank you in advance for your anticipated cooperation.

Best regards,



James A. Kassis

JAK:ar

Enclosures

cc: Morristown Transmission, LLC
Peter Boyer, Esq.
Carl A. Marczak, CPA

CONSENT TO DISCLOSURE OR USE OF INFORMATION

I, Nicholas Caiella, by my signature below, do hereby declare and swear:

1. I am a taxpayer pursuant to Internal Revenue Code sections 6713, 7216, and Income Tax Regulations section 301.7216-3(b) for purposes of providing consent to disclosure of information furnished to a tax return preparer and a licensed certified public accountant.

2. This Consent to Disclosure is being furnished for the purpose of permitting Carl A. Marczak, CPA, to produce records and otherwise disclose information obtained in the course of providing professional tax accounting services to the undersigned, to counsel for the parties to the action, Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al., Docket No. MRS-L-2079-12, in response to a subpoena for personal appearance and production of business records served upon Carl A. Marczak, CPA. For so long as said action is pending, this Consent to Disclosure permits Carl A. Marczak, CPA to produce documents and disclose information, as set forth herein, that was provided by this taxpayer in connection with the rendering of professional accounting services, including the preparation of tax returns, and to appear and testify in any court, legal or administrative proceeding in reference thereto.

3. Any information furnished for, in connection with, or for ancillary services in connection with the preparation of tax returns may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under section 301.7216-2 of the Income Tax Regulations) other than that stated in this consent.

4. By my signature below I, as the subject taxpayer, consent to the disclosure or use of information furnished to Carl A. Marczak, CPA for the purposes described in paragraph 2 above.

5. I further agree that facsimile signatures of this document are sufficient so as to bind the undersigned.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed this _____ day, in the month of May, in the year 2014, in the City of _____, in the State of New Jersey.

Signature: _____

Printed Name: _____

CONSENT TO DISCLOSURE OR USE OF INFORMATION

I, Peter Fiorentino, by my signature below, do hereby declare and swear:

1. I am a taxpayer pursuant to Internal Revenue Code sections 6713, 7216, and Income Tax Regulations section 301.7216-3(b) for purposes of providing consent to disclosure of information furnished to a tax return preparer and a licensed certified public accountant.

2. This Consent to Disclosure is being furnished for the purpose of permitting Carl A. Marczak, CPA, to produce records and otherwise disclose information obtained in the course of providing professional tax accounting services to the undersigned, to counsel for the parties to the action, Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al., Docket No. MRS-L-2079-12, in response to a subpoena for personal appearance and production of business records served upon Carl A. Marczak, CPA. For so long as said action is pending, this Consent to Disclosure permits Carl A. Marczak, CPA to produce documents and disclose information, as set forth herein, that was provided by this taxpayer in connection with the rendering of professional accounting services, including the preparation of tax returns, and to appear and testify in any court, legal or administrative proceeding in reference thereto.

3. Any information furnished for, in connection with, or for ancillary services in connection with the preparation of tax returns may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under section 301.7216-2 of the Income Tax Regulations) other than that stated in this consent.

4. By my signature below I, as the subject taxpayer, consent to the disclosure or use of information furnished to Carl A. Marczak, CPA for the purposes described in paragraph 2 above.

5. I further agree that facsimile signatures of this document are sufficient so as to bind the undersigned.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed this _____ day, in the month of May, in the year 2014, in the City of _____, in the State of New Jersey.

Signature: _____

Printed Name: _____

CONSENT TO DISCLOSURE OR USE OF INFORMATION

I, NCPF, LLP, by my signature below, do hereby declare and swear:

1. I am a taxpayer pursuant to Internal Revenue Code sections 6713, 7216, and Income Tax Regulations section 301.7216-3(b) for purposes of providing consent to disclosure of information furnished to a tax return preparer and a licensed certified public accountant.

2. This Consent to Disclosure is being furnished for the purpose of permitting Carl A. Marczak, CPA, to produce records and otherwise disclose information obtained in the course of providing professional tax accounting services to the undersigned, to counsel for the parties to the action, Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al., Docket No. MRS-L-2079-12, in response to a subpoena for personal appearance and production of business records served upon Carl A. Marczak, CPA. For so long as said action is pending, this Consent to Disclosure permits Carl A. Marczak, CPA to produce documents and disclose information, as set forth herein, that was provided by this taxpayer in connection with the rendering of professional accounting services, including the preparation of tax returns, and to appear and testify in any court, legal or administrative proceeding in reference thereto.

3. Any information furnished for, in connection with, or for ancillary services in connection with the preparation of tax returns may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under section 301.7216-2 of the Income Tax Regulations) other than that stated in this consent.

4. By my signature below I, as the subject taxpayer, consent to the disclosure or use of information furnished to Carl A. Marczak, CPA for the purposes described in paragraph 2 above.

5. I further agree that facsimile signatures of this document are sufficient so as to bind the undersigned.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed this _____ day, in the month of May, in the year 2014, in the City of _____, in the State of New Jersey.

Signature: _____

Printed Name: _____

CONSENT TO DISCLOSURE OR USE OF INFORMATION

I, 2 JOS, LLC, by my signature below, do hereby declare and swear:

1. I am a taxpayer pursuant to Internal Revenue Code sections 6713, 7216, and Income Tax Regulations section 301.7216-3(b) for purposes of providing consent to disclosure of information furnished to a tax return preparer and a licensed certified public accountant.

2. This Consent to Disclosure is being furnished for the purpose of permitting Carl A. Marczak, CPA, to produce records and otherwise disclose information obtained in the course of providing professional tax accounting services to the undersigned, to counsel for the parties to the action, Morristown Transmissions, LLC, etc., et al. v. 2 JOS, LLC, et al., Docket No. MRS-L-2079-12, in response to a subpoena for personal appearance and production of business records served upon Carl A. Marczak, CPA. For so long as said action is pending, this Consent to Disclosure permits Carl A. Marczak, CPA to produce documents and disclose information, as set forth herein, that was provided by this taxpayer in connection with the rendering of professional accounting services, including the preparation of tax returns, and to appear and testify in any court, legal or administrative proceeding in reference thereto.

3. Any information furnished for, in connection with, or for ancillary services in connection with the preparation of tax returns may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under section 301.7216-2 of the Income Tax Regulations) other than that stated in this consent.

4. By my signature below I, as the subject taxpayer, consent to the disclosure or use of information furnished to Carl A. Marczak, CPA for the purposes described in paragraph 2 above.

5. I further agree that facsimile signatures of this document are sufficient so as to bind the undersigned.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed this _____ day, in the month of May, in the year 2014, in the City of _____, in the State of New Jersey.

Signature: _____

Printed Name: _____

Carl A Marczak PC

27 Winton Road

East Brunswick, NJ 08816

732-390-1925

Schenck Price Smith & King, LLP

May 8, 2014

220 Park Avenue

PO Box 991

Florham Park, N.J. 07932

Re: Morristown Transmissions, LLC, etc., et al v. 2 JOS, LLC, et al. Docket No. MRS-L-2079-12

File No. 25676-0001

Dear James Kassis,

I am in receipt of a subpoena for (deposition/production of documents) in the above referenced action concerning the taxpayers (Nick Caiella, Peter Fiorentino, NCPF LLP and/or 2jos, LLC) in my capacity as the accountant for said taxpayer during the time period in question in the subpoena.

As an accountant and tax preparer, I may not disclose any financial information relating to the foregoing taxpayers without the taxpayers' written consent or a court permitting the accountant to do so.(IRS Code 6103,6713,7216: Treas. Regs. 301.7216.

Absent the taxpayers' written consent to disclose, please be advised that I must request the courtesy of a court order that permits me to disclose the requested information without the taxpayers' written consent. Please understand I am in no way trying to interfere with the subpoena any more than I would interfere with the rights of the taxpayers to object. It is simply not my place to act as arbiter under such circumstances, particularly when such minor accommodations will appear to resolve the matter.

Accordingly, enclosed please find a sample of a written consent form which I ask you to have the taxpayers to execute in order to allow me to disclose the information sought by the subpoena. It remains my hope that these issues will be informally resolved to avoid incurring otherwise unnecessary expenses for all involved and thus I encourage you to meet and confer with the taxpayers counsel to that end.

Very truly yours



Carl A Marczak CPA

CC Perter Fiorentino, Nick Caiella, Gwen Caiella, Marge Fiorentino

CONSENT TO DISCLOSURE OR USE OF INFORMATION

1. _____, by my signature below, do hereby declare and swear:
2. I am a taxpayer pursuant to Internal Revenue Code sections 6713, 7216, and
3. Income Tax Regulations section 301.7216-3(b) for purposes of providing consent to disclosure
4. of information furnished to a tax return preparer and a licensed certified public accountant.

5. This Consent to Disclosure is being furnished for the purpose of permitting
6. [*CPA], to produce records and otherwise disclose information obtained in the course of
7. providing professional tax accounting services to the undersigned, to counsel for the parties to
8. the action, [*CASE NAME AND NUMBER], in response to a subpoena for personal
9. appearance and production of business records served upon [*CPA]. For so long as said action
10. is pending, this Consent to Disclosure permits [*CPA] to produce documents and disclose
11. information, as set forth herein, that was provided by this taxpayer in connection with the
12. rendering of professional accounting services, including the preparation of tax returns, and to
13. appear and testify in any court, legal or administrative proceeding in reference thereto.

14. 3. Any information furnished for, in connection with, or for ancillary services in
15. connection with the preparation of tax returns may not be disclosed or used by the tax return
16. preparer for any purpose (not otherwise permitted under section 301.7216-2 of the Income Tax
17. Regulations) other than that stated in this consent.

18. 4. By my signature below I, as the subject taxpayer, consent to the disclosure or use
19. of information furnished to [*CPA] for the purposes described in paragraph 2 above.

20. 5. I further agree that facsimile signatures of this document are sufficient so as to
21. bind the undersigned.

22. I declare under penalty of perjury under the laws of the State of California that the
23. foregoing is true and correct.

24. Executed this _____ day, in the month of _____, in the year _____, in
25. the City of _____ in the State of _____
26. Signature: _____
27. Printed Name: _____

-1-
CONSENT TO DISCLOSURE OR USE OF INFORMATION

EXHIBIT C

James A. Kassis

From: James A. Kassis
Sent: Friday, October 03, 2014 12:06 PM
To: boyer@hylandlevin.com
Cc: Barry Frost
Subject: Morristown Transmissino v. AAMCO, et al
Attachments: April 4, 2014 Letter (01397292).pdf

Mr. Boyer,

Please see attached.

Jim

James A. Kassis
Schenck, Price, Smith & King, LLP
Serving our Clients and Community for Over 100 Years
220 Park Avenue | PO Box 991
Florham Park, NJ 07932
Phone: 973-540-7339
Fax: 973-540-7300
Email: JAK@spsk.com
Website: <http://www.spsk.com>
Bio: [View my Bio](#)

Confidentiality Notice:

This message contains information intended for the use of the addressee only, which may be privileged and confidential. If you are not an addressee, any review, distribution, or use of the contents of this message is prohibited. If you have received this message in error, please contact the sender immediately.

James A. Kassis

From: James A. Kassis
Sent: Friday, October 03, 2014 11:17 AM
To: Barry Frost
Cc: boyer@hylandlevin.com
Subject: Morristown Transmission v. AAMCO, et al
Attachments: Letter to Barry Frost Re Consent Disclosure for Tax Records (01440268).pdf

Mr. Frost,

Please see attached. This request was originally made May 21. Thank you for your anticipated cooperation.

Best regards,

Jim

James A. Kassis
Schenck, Price, Smith & King, LLP
Serving our Clients and Community for Over 100 Years
220 Park Avenue | PO Box 991
Florham Park, NJ 07932
Phone: 973-540-7339
Fax: 973-540-7300
Email: JAK@spsk.com
Website: <http://www.spsk.com>
Bio: [View my Bio](#)

Confidentiality Notice:

This message contains information intended for the use of the addressee only, which may be privileged and confidential. If you are not an addressee, any review, distribution, or use of the contents of this message is prohibited. If you have received this message in error, please contact the sender immediately.